

State of Nevada

Common-Interest Communities and Condominium Hotels Program

Department of Business & Industry
Real Estate Division





The Transition from Declarant to Homeowners

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DISCLAIMER

This is a general education class based on NRS 116 and related laws and regulations. It is not intended to provide legal advice. The instructor cannot comment on specific cases or complaints.



Learning Objectives

- ▶ Upon completion of this class, participants will have a basic understanding of:
 - Declarant rights and responsibilities
 - Key HOA/CIC documents
 - The transition from declarant control to unit owners' control



The Beginnings of the Community

HOA Living

- ▶ An HOA is...
 - A self-governing organization of homeowners
 - Defined and explained in law (NRS 116)
 - Also known as a common-interest community

- ▶ An HOA provides...
 - A desirable lifestyle
 - Predictable community standards
 - Common areas/amenities for owners
 - Potential for long-term asset appreciation



NRS 116.021 “Common-interest community” defined.

1. “Common-interest community” means real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.

Pick the best answer

A common-interest community may be created pursuant to NRS by:

- A. Clicking your heels three times
- B. Only by recording a declaration
- C. The declaration must be **recorded in every county** in which any portion of the common-interest community is located
- D. B & C

D

Creation of CIC

NRS 116.2101 Creation of common-interest communities. A common-interest community may be created pursuant to this chapter **only by recording a declaration** executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be **recorded in every county** in which any portion of the common-interest community is located and must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of each person executing the declaration

Declarant

- ▶ Developer/builder of the project
- ▶ CIC created when declaration (CC&Rs) is recorded with the county
 - No later than the date the first unit is conveyed(transferred)
- ▶ Declarant maintains control until certain benchmarks are met



NRS 116.035 “Declarant” defined.

“Declarant” means any person or group of persons acting in concert who:

1. As part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or
2. Reserves or succeeds to any special declarant’s right.

(Added to NRS by [1991, 537](#); A [2011, 2416](#))—(Substituted in revision for NRS 116.035)



When defining an “Affiliate of a declarant” which controls a declarant, are the following statements true?

- A. Is a general partner, officer, director or employer of the declarant;
- B. Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the declarant;
- C. Controls in any manner the election of a majority of the directors of the declarant; or
- D. Has contributed more than 20 percent of the capital of the declarant.

YES True!

NRS 116.007 “Affiliate of a declarant” defined. Affiliate of a declarant” means any person who controls, is controlled by or is under common control with a declarant

1. A person controls a declarant if the person:

- (a) Is a general partner, officer, director or employer of the declarant;
 - (b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the declarant;
 - (c) Controls in any manner the election of a majority of the directors of the declarant;
- or
- (d) Has contributed more than 20 percent of the capital of the declarant.

2. A person is controlled by a declarant if the declarant:

- (a) Is a general partner, officer, director or employer of the person;
- (b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the person;
- (c) Controls in any manner the election of a majority of the directors of the person; or
- (d) Has contributed more than 20 percent of the capital of the person.

3. Control does not exist if the powers described in this section are held solely as security for an obligation and are not exercised.

(Added to NRS by [1991, 535](#); A [2011, 2415](#))—(Substituted in revision for NRS 116.11031)

NRS 116.095 “Unit’s owner” defined.

- ▶ “Unit’s owner” means a **declarant** or other person who **owns a unit**, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation.
- ▶ In a condominium or planned community, the **declarant is the owner of any unit created by the declaration until that unit is conveyed to another person.**
- ▶ In a cooperative, the **declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.**

(Added to NRS by [1991, 539](#); A [2011, 2417](#))—(Substituted in revision for NRS 116.110393)

Which of the following is not a developmental right of the declarant?

- A. Add real estate to a common-interest community
- B. Create street names for the city streets surrounding the community
- C. Create units, common elements or limited common elements within a common-interest community
- D. Withdraw real estate from a common-interest community.

B

Developmental Rights

NRS 116.039 “Developmental rights” defined.

“Developmental rights” means any right or combination of rights reserved by a declarant in the declaration to:

1. Add real estate to a common-interest community;
2. Create units, common elements or limited common elements within a common-interest community;
3. Subdivide units or convert units into common elements; or
4. Withdraw real estate from a common-interest community.

(Added to NRS by [1991, 537](#))—(Substituted in revision for NRS 116.11034)



Determinations–Declarant Control

Contents of declaration

Unit Boundaries

Common elements

Limited Common Elements

Declarant's Rights

- ▶ Described in declaration
- ▶ Defines total number of units in the development/project
- ▶ Common elements in the development
- ▶ Board control/appointment of members
- ▶ Sales & Marketing



Contents of Declaration

- ▶ Name of the CIC and association, county(s)
- ▶ Type: condominium, cooperative, planned community
- ▶ Legal description of the real estate
- ▶ Maximum number of units
- ▶ Unit boundaries, identifying number, description



Contents of Declaration

- ▶ Declarant's rights, development rights
- ▶ Conditions, limitations
- ▶ Restrictions on use, occupancy
- ▶ Other matters the declarant considers appropriate
- ▶ Limited common elements, if any
- ▶ Description of real estate that may be allocated as limited common elements



NRS 116.2105 Contents of declaration.

1. The declaration must contain:

- (a) The names of the common-interest community and the association and a statement that the common-interest community is either a condominium, cooperative or planned community;
- (b) The name of every county in which any part of the common-interest community is situated;
- (c) A legally sufficient description of the real estate included in the common-interest community;
- (d) A statement of the maximum number of units that the declarant reserves the right to create;
- (e) In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;
- (f) A description of any limited common elements, other than those specified in subsections 2 and 4 of [NRS 116.2102](#), as provided in paragraph (g) of subsection 2 of [NRS 116.2109](#) and, in a planned community, any real estate that is or must become common elements;
- (g) A description of any real estate, except real estate subject to developmental rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in subsections 2 and 4 of [NRS 116.2102](#), together with a statement that they may be so allocated;
- (h) A description of any developmental rights and other special declarant's rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;
- (i) If any developmental right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:
 - (1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each developmental right or a statement that no assurances are made in those regards; and
 - (2) A statement whether, if any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right must be exercised in all or in any other portion of the remainder of that real estate;
- (j) Any other conditions or limitations under which the rights described in paragraph (h) may be exercised or will lapse;
- (k) An allocation to each unit of the allocated interests in the manner described in [NRS 116.2107](#);
- (l) Any restrictions:
 - (1) On use, occupancy and alienation of the units; and
 - (2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the common-interest community, or on termination of the common-interest community;
- (m) The file number and book or other information for recorded easements and licenses appurtenant to or included in the common-interest community or to which any portion of the common-interest community is or may become subject by virtue of a reservation in the declaration; and
- (n) All matters required by [NRS 116.2106](#) to [116.2109](#), inclusive, [116.2115](#), [116.2116](#) and [116.31032](#).

2. The declaration may contain any other matters the declarant considers appropriate.

(Added to NRS by [1991, 544](#); A [1993, 2357](#); [2009, 1611](#); [2011, 2421](#))

NRS 116.2102 Unit boundaries.

Except as otherwise provided by the declaration:

1. If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, **and all other portions of the walls, floors or ceilings are a part of the common elements.**

2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof **serving only that unit is a limited common element** allocated solely to that unit, and any portion thereof **serving more** than one unit or any portion of the common elements is a part of the **common elements.**

3. Subject to subsection 2, all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.

4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, pads and mounts for heating and air-conditioning systems, patios and all exterior doors and windows or other fixtures **designed to serve a single unit, but located outside the unit's boundaries,** are **limited common elements** allocated exclusively to that unit.

(Added to NRS by [1991, 543](#))

NRS 116.2108 Limited common elements

1. Except for the limited common elements described in subsections 2 and 4 of [NRS 116.2102](#), the declaration **must** specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the units' owners whose units are affected.
2. Except as the declaration otherwise provides, a limited common element **may be reallocated by an amendment** to the declaration executed by the units' owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment must be recorded in the names of the parties and the common-interest community.
3. A **common element** not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with paragraph (g) of subsection 1 of [NRS 116.2105](#). The allocations **must be** made by amendments to the declaration.
(Added to NRS by [1991, 547](#))

Which of the following is a special right of a declarant?

- A. Maintain a sales office and signs advertising the common interest community.
- B. Merge or consolidate a common-interest community
- C. Determine who is the nicest unit owner and put a swing set in that person's backyard
- D. Appoint or remove any officer of the association once unit owners control the association

E. A & B

E

D is not correct due to unit owner control

NRS 116.089 “Special declarant’s rights” defined.

“Special declarant’s rights” means rights reserved for the benefit of a declarant to:

1. **Complete improvements** indicated on plats or in the declaration or, in a cooperative, to complete improvements described in the public offering statement pursuant to paragraph (b) of subsection 1 of [NRS 116.4103](#);
2. Exercise any **developmental right**;
3. **Maintain sales offices, management offices, signs advertising the common-interest community and models**;
4. **Use easements** through the common elements for the purpose of making improvements within the common-interest community or within real estate which may be added to the common-interest community;
5. Make the common-interest community **subject to a master association**;
6. **Merge or consolidate a common-interest community** with another common-interest community of the same form of ownership; or
7. **Appoint or remove any officer of the association** or any master association or any member of an executive board during any period of declarant’s control.

(Added to NRS by [1991, 538](#); A [2009, 1608](#); [2011, 2416](#))—(Substituted in revision for NRS 116.110385)

Amendment of declaration– with regard to a declarant with rights

NRS 116.2117 Amendment of declaration.

7. A provision in the declaration creating special declarant's rights that have not expired may not be amended without the consent of the declarant.

(Added to NRS by [1991, 551](#); A [1993, 2362](#); [1999, 395, 396](#); [2005, 2589](#); [2009, 1615, 1733](#); [2011, 2424](#))

NRS 116.2115 Use for purposes of sales.

A declarant may maintain offices for sales and management, and models in units or on common elements in the common-interest community only if the declaration so provides. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common-interest community. This section is subject to the provisions of other state law and to local ordinances.

CIC Documents

- ▶ Declaration (CC&Rs) – County Recorder
 - Sets out the allowances and prohibitions within the community
- ▶ Articles of Incorporation – Secretary of State
 - Establishes the corporate structure for the HOA
 - Typically organized as a nonprofit corporation under NRS 82
 - Name must include: “common-interest community” “community association” “master association” “homeowners’ association” or “unit-owners association”



Governing Documents

- ▶ Covenants, Conditions, & Restrictions–CC&Rs
 - HOA “Constitution”; the general scope of the CIC
- ▶ Articles of Incorporation
 - Creates the corporate structure
- ▶ Bylaws
 - Defines the internal rules of the HOA
- ▶ Rules
 - Specific requirements residents and owners must follow
- ▶ Policies
 - Assessments, fees, fine schedules, interest rates for late payments, any other cost billed to the unit owner



NRS 116.049 “Governing documents” defined.

“Governing documents” means:

1. The declaration for the common-interest community;
2. The articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents that are used to organize the association for the common-interest community;
3. The bylaws and rules of the association; and
4. Any other documents that govern the operation of the common-interest community or the association.

(Added to NRS by [1997, 3111](#); A [2005, 2587](#))

CIC Documents

- ▶ Other documents
 - Plats/maps/plans
 - Meeting minutes
 - Financial statements
 - Budget, collection policy
 - Contracts
 - Insurance policies
 - Warranties
 - Permits, inspection certificates
 - Any other documents relevant to the association



Which of the following is not in the Bylaws?

- A. Provide procedural rules for conducting meetings of the association
- B. Provide the number of members of the executive board and the titles of the officers of the association
- C. Provide the number of bathrooms in a unit
- D. Specify a method for the units' owners to amend the bylaws

C

Bylaws NRS 116.3106

1. The bylaws of the association must:
 - (a) Provide the number of members of the executive board and the titles of the officers of the association;
 - (b) Provide for election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;
 - (c) Specify the qualifications, powers and duties, terms of office and manner of electing and removing officers of the association and members of the executive board and filling vacancies;
 - (d) Specify the powers the executive board or the officers of the association may delegate to other persons or to a community manager;
 - (e) Specify the officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association;
 - (f) Provide procedural rules for conducting meetings of the association;
 - (g) Specify a method for the units' owners to amend the bylaws;
 - (h) Provide procedural rules for conducting elections;
 - (i) Contain any provision necessary to satisfy requirements in this chapter or the declaration concerning meetings, voting, quorums and other activities of the association; and
 - (j) Provide for any matter required by law of this State other than this chapter to appear in the bylaws of organizations of the same type as the association.
2. Except as otherwise provided in this chapter or the declaration, the bylaws may provide for any other necessary or appropriate matters, including, without limitation, matters that could be adopted as rules.
3. The bylaws must be written in plain English.

One of following statements is not true about rules ?

- A. Must be reasonably related to the purpose for which they are adopted.
- B. Must not be adopted to evade any obligation of the association
- C. Must be uniformly enforced under the same or similar circumstances against all units' owners
- D. The association can increase assessment fee if a rule is broken.

D

Rules

NRS 116.31065 Rules. The rules adopted by an association:

1. Must be reasonably related to the purpose for which they are adopted.
2. Must be sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance.
3. Must not be adopted to evade any obligation of the association.
4. Must be consistent with the governing documents of the association and must not arbitrarily restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.
5. Must be uniformly enforced under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner.
6. May be enforced by the association through the imposition of a fine only if the association complies with the requirements set forth in [NRS 116.31031](#).

(Added to NRS by [1997, 3111](#); A [1999, 3004](#); [2003, 2269](#))

Period of Declarant Control

When the Declarant is in control, are the following abilities allowed per NRS116?

1. A declarant may appoint and remove the officers of the association and members of the executive board
2. Persons designated by a declarant, may appoint and remove the officers of the association and members of the executive board
3. A declarant may voluntarily surrender the right to appoint
4. A declarant may voluntarily surrender the right to appoint but specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective

YES

When is there a time when an employee of a declarant or an affiliate of a declarant who is a member of the executive board not vote?

A. An affiliate of a declarant can never vote at any meetings

B. Can vote at all executive meetings

C. When the member stands to gain any personal profit on the matter

C

NRS 116.31084 Voting by member of executive board; disclosures;
abstention from voting on certain matters.

1. A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall:

- (a) Disclose the matter to the executive board; and
- (b) Abstain from voting on any such matter.

2. A member of an executive board who has a member of his or her household or any person related to the member by blood, adoption or marriage within the third degree of consanguinity or affinity who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall disclose the matter to the executive board before voting on any such matter.

3. For the purposes of this section:

(a) An employee of a declarant or an affiliate of a declarant who is a member of the executive board shall not, solely by reason of such employment or affiliation, be deemed to gain any personal profit or compensation.

(b) A member of an executive board shall not be deemed to gain any personal profit or compensation solely because the member of the executive board is the owner of a unit in the common-interest community.

(Added to NRS by [2009, 1099](#), [2908](#))

Upkeep of association

NRS 116.3107 Upkeep of common-interest community.

1. Except to the extent provided by the declaration, subsection 2 and [NRS 116.31135](#), the association has the duty to provide for the maintenance, repair and replacement of the common elements, and each unit's owner has the duty to provide for the maintenance, repair and replacement of his or her unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his or her unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit's owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

2. In addition to the liability that a declarant as a unit's owner has under this chapter, **the declarant alone is liable for all expenses in connection with real estate subject to developmental rights.** No other unit's owner and no other portion of the common-interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to developmental rights inures to the declarant.

3. In a planned community, if all developmental rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

(Added to NRS by [1991, 562](#); A [1993, 2368](#); [2009, 2886](#))

Qualifying Transition Benchmarks (units sold)

- ▶ 25% of units sold – 25% of board members must be unit's owners (at least 1 member)
- ▶ 50% of units sold – 33% of board members must be unit's owners
- ▶ 75% of units sold – declarant control ends



NRS 116.31032 Period of declarant's control of association; representation of units' owners on executive board

2. Not later than 60 days after conveyance of 25 percent of the units that may be created to units' owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by units' owners other than the declarant.

Not later than 60 days after conveyance of 50 percent of the units that may be created to units' owners other than a declarant,

not less than one-third of the members of the executive board must be elected by units' owners other than the declarant

Declarant no longer in control

Which situations are times when declarant control ends?

- A. The declarant voluntarily surrenders control
- B. Five years after all declarants have ceased to offer units for sale in the ordinary course of business
- C. Sixty days after conveyance of 75 percent of the units
- D. A, B, C
- E. The declarant doesn't, his wife controls it! He never had a chance!

D

Declarant Control Ends

- ▶ 60 days after conveyance of 75% of units
- ▶ 5 years after declarant has stopped offering units for sale
- ▶ 5 years after the right to add new units was last exercised
- ▶ The declarant voluntarily surrenders control



NRS 116.31032 Period of declarant's control of association; representation of units' owners on executive board.

1. Except as otherwise provided in this section, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by a declarant, may appoint and remove the officers of the association and members of the executive board. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period and, in that event, the declarant may require, for the duration of the period of declarant's control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. **Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earliest of:**

(a) **Sixty days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant or, if the association exercises powers over a common-interest community pursuant to this chapter and a time-share plan pursuant to [chapter 119A](#) of NRS, 120 days after conveyance of 80 percent of the units that may be created to units' owners other than a declarant;**

(b) **Five years after all declarants have ceased to offer units for sale in the ordinary course of business;**

(c) **Five years after any right to add new units was last exercised; or**

(d) **The day the declarant, after giving notice to units' owners, records an instrument voluntarily surrendering all rights to control activities of the association.**

2. **Not later than 60 days after conveyance of 25 percent of the units that may be created to units' owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by units' owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to units' owners other than a declarant, not less than one-third of the members of the executive board must be elected by units' owners other than the declarant.**

(Added to NRS by [1993, 2353](#); A [2001, 2490](#); [2011, 2433](#))

NRS Requirements Transition Point

Transition Committee

- ▶ Not required in NRS but greatly facilitates the process (check governing documents)
- ▶ Owners, board members, declarant, affiliates
- ▶ Develop list of documents and equipment
- ▶ Cross reference with public offering statement, other documents
- ▶ Bank account transfer
- ▶ Separate reserve study and audit?



Which of the following is not included at the time of transfer ?

- A. Declaration
- B. Minutes
- C. Association money
- D. Warranties
- E. Reserve study
- F. None all included in transfer

F

HOA Property Transfer

- ▶ Original or certified copy
 - Declaration
 - Articles of Incorporation
 - Bylaws
 - Minutes and other records
 - Adopted rules and regulations
 - Plats/maps/plans
- ▶ Accounting/financial records
 - Audited financial statements
 - Ancillary audit (within 210 days)
 - Statement of all subsidies



HOA Property Transfer

- ▶ Reserve Study
 - Account containing the declarant share
 - Control of association account(s)
- ▶ Property represented as belonging to the association
- ▶ Copy of plans for improvements completed within 2 years before declaration recorded



HOA Property Transfer

- ▶ Insurance policies
- ▶ Certificates of occupancy
- ▶ Permits and governmental approvals
- ▶ Warranties still in effect
- ▶ List of owners
- ▶ Applicable employment contracts
- ▶ Applicable service contracts



Additional Common Elements

- ▶ Phased development

- ▶ Completion after control transferred to owners
 - Declarant or successor declarant
 - Pay expenses until transfer to association
 - Obtain reserve study on additional elements
 - Pay reserve contribution



Reserves

- ▶ Declarant must provide a reserve study performed by a Reserve Study Specialist
- ▶ Reserve account that contains the declarant's share of the amount then due
 - If the declaration was recorded before 10/1/99 a deficiency may be paid in installments of up to 3 yrs.
- ▶ Control of the account



NRS 116.31038 Delivery to association of property held or controlled by declarant

. In addition to any applicable requirement set forth in [NRS 116.310395](#), within 30 days after units' owners other than the declarant may elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the units' owners and of the association held by or controlled by the declarant, including:

1. The **original or a certified copy of the recorded declaration** as amended, the articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents of organization for the association, the bylaws, minute books and other books and records of the association and any rules or regulations which may have been adopted.

2. An **accounting for money of the association and audited financial statements for each fiscal year** and any ancillary period from the date of the last audit of the association to the date the period of the declarant's control ends. The financial statements must fairly and accurately report the association's financial position. The declarant shall pay the costs of the ancillary audit. The ancillary audit must be delivered within 210 days after the date the period of the declarant's control ends.

3. A **complete study of the reserves of the association**, conducted by a person who is registered as a reserve study specialist pursuant to [chapter 116A](#) of NRS. At the time the control of the declarant ends, the declarant shall:

(a) Except as otherwise provided in this paragraph, deliver to the association a **reserve account** that contains the **declarant's share of the amounts** then due, and control of the account. If the declaration was recorded before October 1, 1999, and, at the time the control of the declarant ends, the declarant has failed to pay his or her share of the amounts due, the executive board shall authorize the declarant to pay the deficiency in installments for a period of 3 years, unless the declarant and the executive board agree to a shorter period.

(b) Disclose, in writing, the amount by which the declarant has subsidized the association's dues on a per unit or per lot basis.

NRS 116.31038 Delivery to association of property held or controlled by declarant

4. The association's money or control thereof.
5. **All of the declarant's tangible personal property** that has been represented by the **declarant as property of the association** or, unless the declarant has disclosed in the public offering statement that all such personal property used in the common-interest community will remain the declarant's property, all of the declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties.
6. A copy of any plans and specifications used in the construction of the **improvements** in the common-interest community which were completed within 2 years before the declaration was recorded.
7. **All insurance policies** then in force, in which the units' owners, the association, or its directors and officers are named as insured persons.
8. **Copies of any certificates of occupancy** that may have been issued with respect to any improvements comprising the common-interest community other than units in a planned community.

NRS 116.31038 Delivery to association of property held or controlled by declarant

9. Any **renewable permits** and approvals issued by governmental bodies applicable to the common-interest community which are in force and any other permits and approvals so issued and applicable which are required by law to be kept on the premises of the community.
10. **Written warranties** of the contractor, subcontractors, suppliers and manufacturers that are still effective.
11. A **roster of owners** and mortgagees of units and their addresses and telephone numbers, if known, as shown on the declarant's records.
12. **Contracts of employment** in which the association is a contracting party.
13. Any **contract for service** in which the association is a contracting party or in which the association or the units' owners have any obligation to pay a fee to the persons performing the services.

(Added to NRS by [1993, 2354](#); A [1999, 3002](#); [2001, 2490](#); [2005, 2597](#); [2009, 2918](#))

constructed by declarant or successor declarant ■

1. If a common-interest community is developed in separate phases and any declarant or successor declarant is constructing any common elements that will be added to the association's common elements after the date on which the units' owners other than the declarant may elect a majority of the members of the executive board, the declarant or successor declarant who is constructing such additional common elements is responsible for:

(a) Paying all expenses related to the additional common elements which are incurred before the conveyance of the additional common elements to the association; and

(b) Except as otherwise provided in [NRS 116.31038](#), delivering to the association that declarant's share of the amount specified in the study of the reserves completed pursuant to subsection 2.

2. Before conveying the additional common elements to the association, the declarant or successor declarant who constructed the additional common elements shall deliver to the association a study of the reserves for the additional common elements which satisfies the requirements of [NRS 116.31152](#).

3. As used in this section, "successor declarant" includes, without limitation, any successor declarant who does not control the association established by the initial declarant.

(Added to NRS by [2003, 2219](#))

NRS 116.3104 Transfer of special declarant's right.

- ▶ 1. A special declarant's right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common-interest community is located. The instrument is not effective unless executed by the transferee.
- ▶ 2. Upon transfer of any special declarant's right, the liability of a transferor declarant is as follows:
 - ▶ (a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranties imposed upon the transferor by this chapter. Lack of privity does not deprive any unit's owner of standing to maintain an action to enforce any obligation of the transferor.
 - ▶ (b) If a successor to any special declarant's right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the common-interest community.
 - ▶ (c) If a transferor retains any special declarant's rights, but transfers other special declarant's rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant's rights and arising after the transfer.
 - ▶ (d) A transferor has no liability for any act or omission or any breach of a contractual obligation or warranty arising from the exercise of a special declarant's right by a successor declarant who is not an affiliate of the transferor.
- ▶ 3. Unless otherwise provided in a mortgage, deed of trust or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership, of any units owned by a declarant or real estate in a common-interest community subject to developmental rights, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request, succeeds to all special declarant's rights related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to [NRS 116.2115](#) and held by that declarant to maintain models, offices for sales and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant's rights requested.
- ▶ 4. Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership of all interests in a common-interest community owned by a declarant:
 - ▶ (a) The declarant ceases to have any special declarant's rights; and
 - ▶ (b) The period of declarant's control ([NRS 116.31032](#)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant's rights held by that declarant to a successor declarant.
- ▶ (Added to NRS by [1991, 560](#); A [1993, 2366](#))

Are the following liabilities/ obligations which a transferor would be responsible for after transition ?

A. Misrepresentations by any previous declarant

B. Warranties on improvements made by any previous declarant, or made before the common-interest community was created;

C. Breach of any fiduciary obligation by any previous declarant or previous declarant's appointees to the executive board;

NO

NRS 116.31043 Liabilities and obligations of person who succeeds to special declarant's rights

The liabilities and obligations of a person who succeeds to special declarant's rights are as follows:

1. A successor to any special declarant's right who is an affiliate of a declarant is subject to all **obligations and liabilities** imposed on the transferor by this chapter or by the declaration.

2. A successor to any special declarant's right, other than a successor described in subsection 3 or 4 or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this chapter or the declaration:

(a) On a declarant which relate to the successor's exercise or nonexercise of special declarant's rights; or

(b) On his or her transferor, **other than**:

(1) **Misrepresentations by any previous declarant;**

(2) **Warranties on improvements made by any previous declarant, or made before the common-interest community was created;**

(3) **Breach of any fiduciary obligation by any previous declarant or previous declarant's appointees to the executive board; or**

(4) **Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.**

3. A successor to only a right reserved in the declaration to maintain models, offices for sales and signs ([NRS 116.2115](#)), may not exercise any other special declarant's right, and is not subject to any liability or obligation as a declarant, **except the obligation** to provide a **public offering statement** and any liability arising as a result thereof.

4. A successor to all special declarant's rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection 3 of [NRS 116.3104](#), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant's rights to any person acquiring title to any unit or real estate subject to developmental rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his or her transferor to control the executive board in accordance with [NRS 116.31032](#) for the duration of any period of declarant's control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant's rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under [NRS 116.31032](#).

(Added to NRS by [1991, 561](#); A [1993, 2367](#))

When changes can be done by Unit Owners

Within 2 years after the executive board elected by the units' owners pursuant to [NRS 116.31034](#) takes office, the association may terminate which of the following without penalty?

- A. Any management, maintenance, operations or employment contract,
- B. lease of recreational or parking areas or facilities
- C. Any other contract or lease between the association and a declarant
- D. All of the above
- E. None of the above

D

Declarant Contract & Leases

- ▶ Within 2 years after transition the board may, upon 90 days written notice, terminate...
 - Management contract
 - Maintenance contracts
 - Operations or employment contracts
 - Lease of recreational or parking areas or facilities
 - Any other lease or contract between the association and the declarant or an affiliate of the declarant
 - Any contract or lease not in good faith or considered unconscionable



NRS 116.3105 Termination of contracts and leases of declarant

- ▶ 1. Within 2 years after the executive board elected by the units' owners pursuant to [NRS 116.31034](#) takes office, the association may terminate without penalty, upon not less than 90 days' notice to the other party, any of the following if it was entered into before that executive board was elected:
 - ▶ (a) Any management, maintenance, operations or employment contract, or lease of recreational or parking areas or facilities; or
 - ▶ (b) Any other contract or lease between the association and a declarant or an affiliate of a declarant.
- ▶ 2. The association may terminate without penalty, at any time after the executive board elected by the units' owners pursuant to [NRS 116.31034](#) takes office upon not less than 90 days' notice to the other party, any contract or lease that is not in good faith or was unconscionable to the units' owners at the time entered into.
- ▶ 3. This section does not apply to:
 - ▶ (a) Any lease the termination of which would terminate the common-interest community or reduce its size, unless the real estate subject to that lease was included in the common-interest community for the purpose of avoiding the right of the association to terminate a lease under this section; or
 - ▶ (b) A proprietary lease.
- ▶ (Added to NRS by [1991, 561](#); A [1993, 2368](#); [2011, 2435](#))

When is the one time a declarant is not obligated to complete and restore?

A. Except for improvements labeled “NEED NOT BE BUILT

B. Always obligated to complete and restore

C. Declarant has no obligations to complete and restore

A

NRS 116.4119 Declarant's obligation to complete and restore.

1. Except for improvements labeled “NEED NOT BE BUILT,” the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to [NRS 116.2109](#), whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

2. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common-interest community, of any portion of the common-interest community affected by the exercise of rights reserved pursuant to or created by [NRS 116.211](#) to [116.2113](#), inclusive, [116.2115](#) or [116.2116](#).



Common Declarant Issues

- ▶ Failure to pay assessments on owned units
- ▶ Failure to deed common elements
- ▶ Failure to fund the reserves
- ▶ Failure to obtain an audit
- ▶ Transfer of rights to another developer
 - Original declarant not relieved of all liability
 - Successor restricted by declaration
- ▶ Bankruptcy
 - Puts the bank in charge



Amending The Declaration

NRS 116.2117

- ▶ A majority of owners, unless otherwise specified in the declaration
- ▶ Certain amendments may require 100% approval
- ▶ Certain amendments cannot be imposed on current owners (grand-fathered)
- ▶ Any special approval required?
- ▶ Any special provisions?
- ▶ File with county
- ▶ Copies to owners
- ▶ Can be challenged up to 1 year



Supermajority

NRS 116.21175

- ▶ If a supermajority is required to amend the declaration and a simple majority approves
- ▶ Petition district court
- ▶ Court may waive supermajority requirement and declare the amendment validly approved



At time of Purchase

NRS 116.079 “Purchaser” defined.

“Purchaser” means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

1. A leasehold interest, including options to renew, of less than 20 years; or
2. As security for an obligation.

(Added to NRS by [1991, 538](#); A [2011, 2416](#))—(Substituted in revision for NRS 116.110375)

Promotional Material

NRS 116.4118 Labeling of promotional material. No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as “MUST BE BUILT” or as “NEED NOT BE BUILT.”

(Added to NRS by [1991, 579](#))



If the declaration provides that a common-interest community is subject to any developmental rights, the public offering statement must disclose?

- A. The maximum number of units that may be created
- B. A statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use
- C. A statement of the of what percentage of the property can be used as a dog park.
- D. General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common-interest
- E. None of the above
- F. A,B,D

F

Public Offering Statement

- ▶ Declarant information
- ▶ Type of development
- ▶ General description of the CIC
- ▶ Estimated number of units
- ▶ Copies of the governing documents
- ▶ Financial information
- ▶ Declarant subsidies
- ▶ Special fees –purchaser or seller
- ▶ Warranties



Public Offering Statement

- ▶ Cancellation of purchase
- ▶ Any pending legal action/judgments
- ▶ Description of all fees, charges
- ▶ Restrictions on leasing/renting/pricing
- ▶ Special covenants that bind the CIC
- ▶ “Did you know?” Brochure



subject to developmental rights.

If the declaration provides that a common-interest community is subject to any developmental rights, the public offering statement must disclose, in addition to the information required by [NRS 116.4103](#):

1. The maximum number of units that may be created;
2. A statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding restrictions of use;
3. A statement of the extent to which any buildings or other improvements that may be erected pursuant to any developmental right in any part of the common-interest community will be compatible with existing buildings and improvements in the common-interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;
4. General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common-interest community pursuant to any developmental right reserved by the declarant, or a statement that no assurances are made in that regard;
5. A statement of any limitations as to the locations of any building or other improvement that may be constructed or made within any part of the common-interest community pursuant to any developmental right reserved by the declarant, or a statement that no assurances are made in that regard;
6. A statement that any limited common elements created pursuant to any developmental right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common-interest community, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;
7. A statement that the proportion of limited common elements to units created pursuant to any developmental right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common-interest community, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;
8. A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to any units created pursuant to any developmental right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and
9. A statement of the extent to which any assurances made pursuant to this section apply or do not apply if any developmental right is not exercised by the declarant.

(Added to NRS by [1991, 573](#))

Termination of Common Interest Community

Terminating a CIC

NRS 116.2118

- ▶ 80% of owners (or more) must approve
- ▶ Special approval required?
- ▶ Sale of common elements
- ▶ Sale of units
- ▶ Distribution of proceeds
- ▶ Rights of creditors
- ▶ Work with legal council



Terminating a CIC

NRS 116.2118

- ▶ 80% of owners (or more) must approve
- ▶ Special approval required?
- ▶ Sale of common elements
- ▶ Sale of units
- ▶ Distribution of proceeds
- ▶ Rights of creditors
- ▶ Work with legal council



NRS 116.2118 Termination of common-interest community.

1. Except in the case of a taking of all the units by eminent domain, in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in [NRS 116.2124](#), a common-interest community may be terminated only by agreement of units' owners to whom at least 80 percent of the votes in the association are allocated, or any larger percentage the declaration specifies, and with any other approvals required by the declaration. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.
2. An agreement to terminate must be evidenced by the execution of an agreement to terminate, or ratifications thereof, in the same manner as a deed, by the requisite number of units' owners. The agreement must specify a date after which the agreement will be void unless it is recorded before that date. An agreement to terminate and all ratifications thereof must be recorded in every county in which a portion of the common-interest community is situated and is effective only upon recordation.
3. In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, an agreement to terminate may provide that all of the common elements and units of the common-interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common-interest community is to be sold following termination, the agreement must set forth the minimum terms of the sale.
4. In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, an agreement to terminate may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the units' owners consent to the sale.
5. The association, on behalf of the units' owners, may contract for the sale of real estate in a common-interest community, but the contract is not binding on the units' owners until approved pursuant to subsections 1 and 2. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to units' owners and lienholders as their interests may appear, in accordance with [NRS 116.21183](#) and [116.21185](#). Unless otherwise specified in the agreement to terminate, as long as the association holds title to the real estate, each unit's owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit's owner and his or her successors in interest remain liable for all assessments and other obligations imposed on units' owners by this chapter or the declaration.
6. In a condominium or planned community, if the real estate constituting the common-interest community is not to be sold following termination, title to the common elements and, in a common-interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common-interest community, vests in the units' owners upon termination as tenants in common in proportion to their respective interests as provided in [NRS 116.21185](#), and liens on the units shift accordingly. While the tenancy in common exists, each unit's owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.
7. Following termination of the common-interest community, the proceeds of a sale of real estate, together with the assets of the association, are held by the association as trustee for units' owners and holders of liens on the units as their interests may appear



Summary Points

- ▶ The declarant creates the CIC when the declaration is filed with the county
- ▶ Control transferred to owners when 75% of units are sold
- ▶ Transfer includes documents, records, reserve study, audits, property, money
- ▶ A committee can help facilitate the process and resolve issues arising during the process



Summary Points

Within 2 years after the executive board elected by the units' owners pursuant to [NRS 116.31034](#) takes office, the association may terminate without :

Any management, maintenance, operations or employment contract, or lease of recreational or parking areas or facilities;

The board should be prepared to manage the association on behalf of its members



QUESTIONS?

- ▶ Web Site
 - www.red.state.nv.us
- ▶ Phone
 - 702.486.4480/877.829.9907/775.687.4280
- ▶ FAX
 - 702.486.4520/775.687.5868
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 - 2501 East Sahara Ave, Suite 202, Las Vegas, NV 89104
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